

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	MDL No. 2545
This Document Relates to All Cases	Master Docket Case No. 1:14-cv-01748  Hon. Judge Matthew F. Kennelly

**JOINT STATUS REPORT  
FOR JULY 9, 2015 CASE MANAGEMENT CONFERENCE**

The Court directed counsel to file this joint report regarding the status of the parties' discussions, agreements and disagreements on the proposed agenda items for the July 9, 2015 case management conference. Since the last case management conference, the parties conferred and made progress toward agreement on the agenda items, as follows:

***I. Product Liability Cases***

***A. Parties' Submissions Regarding Production of AbbVie Custodial Files and Deposition Coordination:*** On June 29<sup>th</sup>, Plaintiffs and AbbVie filed simultaneous submissions regarding their respective positions on the production of custodial files and the coordination of depositions with other jurisdictions. The parties submitted their simultaneous responses on July 6<sup>th</sup>. The parties have also met and conferred but have been unable to resolve this issue. The parties respectfully request that this matter be addressed at the July 9th Case Management Conference.

***B. Plaintiffs' Request for Entry of a Defense Fact Sheet and Protocol for Same:*** Plaintiffs filed their request and brief in support on June 15<sup>th</sup>. AbbVie responded on June 26<sup>th</sup> and plaintiffs filed their reply on July 1<sup>st</sup>. The parties are continuing to meet and confer to

narrow the disputed issues but anticipate needing the Court's assistance to fully resolve this matter at the July 9<sup>th</sup> Case Management Conference.

**C. *Plaintiffs' Motion to Compel Production of Documents Pertaining to the Safety of Exogenous Testosterone*:** Plaintiffs filed their motion on June 26<sup>th</sup>. AbbVie has not yet responded to this motion but anticipates filing an opposition shortly. The parties have met and conferred but the issue remains unresolved.

**D. *AbbVie's Report on Bellwether Eligible PFS Productions*:** On June 25<sup>th</sup>, AbbVie advised Plaintiffs' Co-Lead Counsel that its review of the 666 purportedly AbbVie-only cases for which Plaintiff Fact Sheets ("PFS") had been submitted as of June 15, 2015 raised various issues regarding both the compliance with Case Management Order ("CMO") Nos. 9 and 14 and the bellwether eligibility of plaintiffs whose PFS's allege use of other, non-AbbVie, TRT products. AbbVie thereafter sent individual deficiency letters to each Plaintiffs' counsel along with a copy of the June 25<sup>th</sup> letter. Considering the events related to bellwether selection scheduled to take place in the next 60 days, AbbVie is preparing to file a motion to exclude from the bellwether pool those cases which are not truly AbbVie-only cases and exclude those plaintiffs who do not timely cure PFS deficiencies.

***Plaintiffs' Response*:** On June 25<sup>th</sup>, Plaintiffs' Co-Lead counsel received the wide-reaching referenced letter from AbbVie, which asserted there were numerous alleged PFS deficiencies and made claims about what is and is not an AbbVie only case.<sup>1</sup> AbbVie sent its

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<sup>1</sup> The claim by AbbVie of what should be or should not be part of the bellwether eligible pool is the subject of negotiations between counsel with a CMO that is due in August. Indeed, there are many related issues, and this is just one that AbbVie has sought to pick and highlight. For example, the issue of whether AbbVie will be waiving *Lexecon* has been asked and no response provided. The PSC expects all bellwether related issues (as they pertain to selecting/defining) to be resolved or briefed for the Court by

mass letter to Co-Lead Counsel before it sent plaintiffs' counsel in the impacted cases any notice of these alleged deficiencies. Upon subsequent review of the alleged deficiencies by counsel in the underlying cases, it is apparent that the overwhelming majority of the alleged deficiencies are without basis. The PSC is concerned that AbbVie is attempting to use the PFS and related deficiency process as a tactical sword in the bellwether process, rather than as a fact finding and discovery tool to gather information and collect the plaintiffs' medical records with authorizations. More broadly, as to any alleged deficiencies in a particular PFS, the PSC believes CMO 9 provides the process framework and controls how alleged deficiencies in a PFS should be handled, and that any alleged deficiency should be raised promptly to primary plaintiffs' counsel by AbbVie upon identification.

***E. Report on other AbbVie Discovery Responses (Timing & Process)***

- i. Timing of AER productions
- ii. Timeline for SAS production; and
- iii. Report of non-custodial file production

The PSC respectfully requests that these matters be addressed at the July 9th Case Management Conference.

***F. Briefing Schedule for PSC Challenge to Certain Defense Privilege Claims***

***G. ANDA Motions to Dismiss:*** On May 15, 2015, certain defendants who sell testosterone replacement therapies ("TRTs") that were approved pursuant to Abbreviated New Drug Applications ("ANDAs") moved to dismiss the master complaint and any and all individual complaints that contain allegations and causes of actions with respect to their TRTs

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August. It is not, in the PSC's view, appropriate to take one bellwether issue out-of-context with a host of others and complain about it in a letter to lead counsel on the eve of a Court hearing and request either a ruling or intervention. As noted, there are other bellwether related issues at play and the PSC is prepared to discuss all of them with AbbVie.

approved pursuant to ANDAs on the ground that Plaintiffs' claims are preempted under the doctrine of impossibility preemption. This matter is fully briefed and the parties are prepared to present argument at a time that is convenient for the Court.

**H. *Witter v. AbbVie, 14 cv 3623*: Motion to vacate dismissal.**

Dated: July 6, 2015

Respectfully submitted,

/s/ Trent B. Miracle

Trent B. Miracle

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2015, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Trent B. Miracle